

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN M. LARKINS,

Plaintiff,

- against -

CITY OF TROY; CITY OF TROY POLICE OFFICERS
JUSTIN ASHE, DOMINICK COMITALE, and MARTIN
FURCINITI, individually and/or as agents, servants,
and/or employees of the City of Troy,

STATEMENT OF
MATERIAL FACTS

13-cv-1442
(DNH/CFH)

Defendants.

Pursuant to Local Rule 7.1(a)(3), defendant City of Troy Police Officer Dominick Comitale submits the following Statement of Material Facts stating each material fact about which he contends there exists no genuine issue¹:

1. On August 27, 2011, Dominick Comitale was a patrolman acting in the course of his duties with the City of Troy Police Department (Comitale deposition at 4-5, Exhibit A to Casey Affidavit).
2. Officer Comitale received a radio call for assistance and he responded in his patrol car to St. Mary's Hospital (Comitale deposition at 6).
3. He exited his patrol car and entered the Emergency Room (Comitale deposition at 6).
4. He observed Officers Ashe and Furginiti in an altercation with plaintiff John Larkins and a female subject, Gladys Warren (Comitale deposition at 7).

¹ References in parentheses are to the Exhibits attached to the Affidavit of John B. Casey sworn to on March 5, 2015.

5. Officer Comitale removed Gladys Warren from the altercation (Comitale deposition at 8-10).

6. Officers Ashe and Furciniti handcuffed plaintiff and placed plaintiff under arrest (Comitale deposition at 11).

7. Other than being kicked in the hand while removing Gladys Warren from the altercation, Officer Comitale had no contact with plaintiff until after plaintiff was handcuffed by Officers Ashe and Furciniti (Comitale deposition at 11, 19; Larkins deposition at 133-142, Exhibit B to Casey Affidavit).

8. Officer Comitale and Officer Ashe thereafter escorted plaintiff from the Emergency Room to Officer Comitale's patrol car (Comitale deposition at 11-12).

9. While being escorted to the patrol car, plaintiff spit blood on Officer Comitale (Comitale deposition at 12-13).

10. Plaintiff was using vulgar language and yelling that he was going to sue the police officers (Comitale deposition at 13).

11. Officer Comitale did not realize that plaintiff had a cast on his leg until they approached the patrol car (Comitale deposition at 18-19).

12. Officer Comitale put plaintiff in the back of the patrol car and shut the door (Comitale deposition at 12-14).

13. Inside the patrol car, plaintiff started banging his head off the Plexiglas partition and screaming (Comitale deposition at 14-15).

14. Officer Comitale opened the rear door, told plaintiff to stop hitting his head off the partition, and then closed the door (Comitale deposition at 15).

15. Plaintiff continued to bang his head off the partition (Comitale deposition at 15).

16. A second time, Officer Comitale opened the door, told plaintiff to stop, and warned plaintiff that he would be “pepper sprayed” if he did not stop (Comitale deposition at 15).

17. Officer Comitale again shut the door and plaintiff continued to bang his head off the partition (Comitale deposition at 15).

18. Officer Comitale went back to the patrol car, opened the door and told plaintiff to stop or he would be “pepper sprayed” (Comitale deposition at 15).

19. Plaintiff did not stop (Comitale deposition at 15).

20. Officer Comitale then deployed a single, one-second burst of pepper spray on plaintiff’s face (Comitale deposition at 15-17).

21. Officer Comitale deployed the pepper spray while standing outside the vehicle approximately four to five away from plaintiff (Comitale deposition at 18).

22. Plaintiff was handcuffed at the time he was “pepper sprayed” (Comitale deposition at 17).

23. Officer Comitale is certified in the use of pepper spray (Comitale deposition at 16).

24. Pepper spray is known as “OC spray” - oleoresin capsicum spray (Comitale deposition at 25; Troy Police Dept. General Order 06.06, Exhibit C to Casey Affidavit).

25. The Troy Police Department has an OC spray policy (Comitale deposition at 25; Troy Police Dept. General Order 06.06).

26. Officer Comitale “pepper sprayed” plaintiff to prevent plaintiff from hurting himself or damaging the partition (Comitale deposition at 30).

27. Officer Comitale deemed it the most logical course of force to be used under the circumstances (Comitale deposition at 30).

28. Officer Comitale then drove plaintiff to Samaritan Hospital where plaintiff refused all medical treatment (Comitale deposition at 20-21; Larkins deposition at 153).

29. Plaintiff was decontaminated at the Troy Police Department (Comitale deposition at 21).

30. Plaintiff sought no medical treatment for the pepper spray and its effects wore off after 24 hours (Larkins deposition at 148-149).

31. Officer Ashe filed the misdemeanor complaints charging plaintiff with resisting arrest and obstruction of governmental administration in the second degree (Misdemeanor Complaints, Exhibit D to Casey Affidavit).

32. Three other assault charges against plaintiff were dropped by the district attorney's office before his trial in Troy City Court (Certificate of Disposition, Exhibit E to Casey Affidavit; Larkins deposition at 155).

Dated: March 5, 2015

DREYER BOYAJIAN LLP

By:


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